



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DAC/CPW

Re Application of:
Peter William Lorraine et al.

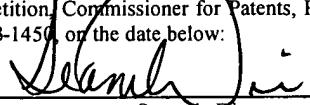
Serial No.: 10/747,739

Filed: December 29, 2003

For: Method for Detection of Defects in
Anisotropic Materials

§§ Group Art Unit: 2856
§§ Examiner: Surin, Jacques M. S.
§§ Atty. Docket: GERD0461/YOD/SWA
§§ RD25422-1
§§

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:	
April 3, 2006	 Seanell Dice
Date	Signature

Sir:

PETITION PURSUANT TO 37 C.F.R. § 1.47

Applicants hereby submit the present Petition in accordance with 37 C.F.R. § 1.47 and M.P.E.P. §§ 409.03(a), (d), and (e). We submit the present Petition as proof of unavailability on the part of Ronald Alan Kline to execute the Combined Declaration & Power of Attorney for the present application.

In accordance with M.P.E.P. § 409.03(a), enclosed with the present petition is a copy of the previously filed Combined Declaration & Power of Attorney executed by all available inventors. *See* Exhibit A. One inventor, Ronald Alan Kline, has not executed this Combined Declaration & Power of Attorney.

In accordance with M.P.E.P. § 409.03(d), the pertinent facts are as follows. In March – June, 2004, Paul J. DiConza (Reg. No. 48,418) attempted to contact Ronald Alan Kline via mail and subsequent internet searches, as set forth in a previous Petition filed on June 30, 2004, in accordance with 37 C.F.R. § 1.47. A copy of the previous Petition is enclosed as Exhibit B. For example, as set forth in the previous petition, the

04/06/2006 NNGUYEN1 000000014 070868 10747739

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Alan Kline, cannot be reached to review the application papers and execute the assignment and declaration documents.

In view of the undeliverable Federal Express attempt of March 3, 2004, the subsequent internet searches between March and June, 2004, and the recent undeliverable certified mail attempt of February 15, 2006, we believe that reasonable and diligent efforts have been made to reach the inventor, Ronald Alan Kline, in accordance with 37 C.F.R. § 1.47 and M.P.E.P. §§ 409.03(a) and (d). Therefore, it is our belief that Ronald Alan Kline is unavailable and/or refuses to execute the declaration for the present application.

In accordance with M.P.E.P. § 409.03(e), the last known addresses for Ronald Alan Kline is:

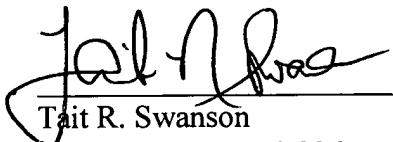
Home: 4408 St. Andrews Court
Norman, Oklahoma 73072

Pursuant to 37 C.F.R. §1.47, then, the joining inventors hereby Petition to be permitted to prosecute the Application without the joinder of Ronald Alan Kline.

Fees

Pursuant to 37 C.F.R. §§ 1.47 and 1.17(g), please charge the requisite fee of \$200 for filing this Petition to Deposit Account No. 07-0868, Order No. RD25422-1/YOD (GERD:0461).

Respectfully submitted,



Tait R. Swanson
Registration No. 48,226
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545

Date: April 3, 2006

application papers were sent to Ronald Alan Kline's last known address via Federal Express on March 3, 2004. Unfortunately, the Federal Express package was returned undeliverable as indicated by the note "move" across the FedEx Airbill, which is enclosed as Exhibit C.

On August 5, 2005, the Patent Office mailed a decision dismissing the previously filed petition. A copy of this decision is enclosed as Exhibit D. As explained on page 2, the decision states "the transmittal letter is not attached to evidence/demonstrate that the entire application (description, claims, abstract, drawings) was presented to the non-signing inventor Mr. Kline along with the oath or declaration." Exhibit D. Furthermore, the petition concludes by stating that the "record as it stands suggests the transmission of the entire application (description, claims, abstract and drawings), but references one or more documents not in evidence (e.g., the transmittal letter)." Exhibit D.

On February 2, 2006, the Patent Office mailed an Office Action, indicating that the application is in condition for allowance except for the lack of signature by one inventor, i.e., Ronald Alan Kline. Specifically, the Office Action stated:

This application is in condition for allowance except for the following formal matters:

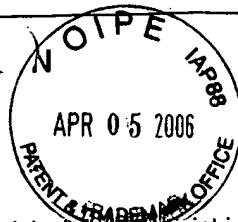
The Oath/Declaration is defective because of the lack of signature of one of the inventors who refuses to sign or cannot be reached. Applicant is advised to refer to MPEP 37 CFR 1.47 regarding "Filing when an inventor refuses to sign and cannot be reached" and also to the detailed information discussed in the petition decision of 08/05/05.

Office Action mailed on February 2, 2006, page 2.

On February 15, 2006, we re-forwarded the entire set of application papers to Ronald Alan Kline at the last known address by certified mail. A copy of the transmittal letter is attached as Exhibit E, and a copy of the certified mail receipt is attached as Exhibit F. As indicated in the transmittal letter, the set of application papers included (1) the original patent application filed in the Patent & Trademark Office, (2) the Figures that accompanied the application, (3) a Declaration, and (4) an Assignment. *See Exhibit E.* Unfortunately, the package was returned undeliverable as indicated by the enclosed copy of the envelope. *See Exhibit G.* Once again, after diligent effort, the inventor, Ronald

EXHIBIT A

DECLARATION FOR PATENT APPLICAT.

Docket Number
RD25422-1

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

METHOD FOR DETECTION OF DEFECTS IN ANISOTROPIC MATERIALS

the specification of which is attached hereto unless the following box is checked:

was filed on 12/29/03 as United States Application Number or PCT International Application Number 10/747,739
and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations §1.56. I hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

Prior Foreign Application

Priority Claimed

 Yes No Yes No

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below.

(Application Number) (Filing Date)

(Application Number) (Filing Date)

I hereby claim the benefit under Title 35, United States Code §120 of any United States Application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

(Application Number) (Filing Date) (Status - patented, pending, abandoned)

(Application Number) (Filing Date) (Status - patented, pending, abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, CUSTOMER NO. 006147.

Paul J. DiConza, Reg. No. 48,418

Christian G. Cabou, Reg. No. 35,467, Donald S. Ingraham, Reg. No. 33,714, Patrick K. Patnode, Reg. No. 40,121, Henry J. Policinski, Reg. No. 26,621, James W. Mitchell, Reg. No. 25,602, Catherine J. Winter, Reg. No. 38,364, and Scott R. Hayden, Reg. No. 41,821.

Address all telephone calls to: Paul J. DiConza at telephone number (518) 387-6131

Address all correspondence to: **General Electric Company**
GRC Patent Docket Rm 4A59
P.O. Box 8, Bldg. K-1
Schenectady, New York 12301

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

SOLE OR FIRST INVENTOR:

Full name: Peter William Lorraine

First Name

Middle Name

Last Name

Signature: Peter William Lorraine

Date 3/12/2007

Residence: Niskayuna, New York

City and State

Citizenship: USA

Post Office Address: 876 Heather Lane, Niskayuna, New York 12309

SECOND JOINT INVENTOR:

Full name: Ronald Alan Kline

First Name

Middle Name

Last Name

Signature: _____

Date _____

Residence: Norman, Oklahoma

City and State

Citizenship: USA

Post Office Address: 4408 St. Andrews Court, Norman, Oklahoma 73072

THIRD JOINT INVENTOR:

Full name:

First Name

Middle Name

Last Name

Signature: _____

Date _____

Residence:

City and State

Citizenship: _____

Post Office Address:

FOURTH JOINT INVENTOR:

Full name:

First Name

Middle Name

Last Name

Signature: _____

Date _____

Residence:

City and State

Citizenship: _____

Post Office Address:



EXHIBIT B

RD-27885 25422-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: P.W. Lorraine et al.
Group Art Unit: 3662
Serial No.: 10/064,618-747,739
Filed: December 29, 2003

PETITION UNDER 37 CFR §1.47(a)

Pursuant to 37 CFR §1.47(a), Applicants respectfully submit this petition to allow the subject application to be made by the signing joint inventor on behalf himself and Mr. Ronald Alan Kline, last known mailing address 4408 St. Andrews Court, Norman, Oklahoma 73072, a non-signing inventor who could not be found or reached after diligent effort.

Applicants respectfully submit that despite diligent efforts to locate Mr. Kline, Applicants have been unable to find him or otherwise contact him to execute the declaration and assignment for the subject patent application. On March 3, 2004, the application papers were sent to Mr. Kline's last known address via Federal Express. This last known address was taken from the GE Corporate inventor database and was separately confirmed by a telephone call to the Human Resources Department, GE Global Research. A copy of the air bill attached to the envelope containing the papers is enclosed in Attachment A herein. The unopened envelope was returned to GE some time later with the message "move" written across the air bill. Applicants then performed a search using various Internet-based directories, searching the state of Oklahoma for various combinations and permutations of Mr. Kline's full name and initials. The search was not successful. Moreover, Applicants contacted the three entries yielded for "Ronald A Kline" from a nationwide search on Yahoo's People Search web site, and none of these efforts produced contact with the inventor of the present application.

In light of Applicants diligent but fruitless efforts to contact Mr. Kline, as set forth above, Applicants respectfully request that the subject application be made by the signing co-inventor on behalf of himself and Mr. Kline.

Respectfully submitted,

Paul J. DiConza

Paul J. DiConza

Reg. No. 48, 418

General Electric Company

Building K1, Room 3A60

Schenectady, New York 12301

30 June 2004

Telephone: (518) 387-6131

Attachment: A

FedEx

emp: 338086 03MAR04

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1 From This portion can be removed for Recipient's records.

Date 3/3/04

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FedEx

Express Package Service

Sender's Name

RITA M. LYNN

FedEx

Priority Overnight

Company

E CORP RES & RETAIL CTR

State NY

ZIP 12230CS

FedEx

Standard Overnight

Address 1

1 E 55TH ST BLDG K1

FedEx

Second Overnight

City NEW YORK

State NY

ZIP 10022

FedEx

FedEx Express Saver

Address 2

1 E 55TH ST BLDG K1

City NEW YORK

State NY

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Address 3

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City NEW YORK

State NY

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See back for peel and stick application instructions.
NO POUCH NEEDED.

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EXHIBIT C

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EXHIBIT B

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EXHIBIT C

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EXHIBIT D

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RD25422-1 PCPI

UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

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Paper No:

GENERAL ELECTRIC COMPANY (PCPI)
C/O FLETCHER YODER
P.O BOX 692289
HOUSTON TX 77269-2289

COPY MAILED

AUG 05 2005

OFFICE OF PETITIONS

In re Application of
Lorraine, et al.
Application No. 10/747,739
Filed: 29 December, 2003
Attorney Docket No. RD25422-1

ON PETITION

This is a decision on the petition filed (originally with an incorrect application number) on 6 July, 2004, under 37 C.F.R. §1.47(a).

The Office regrets the delay in addressing this matter.

For the reasons set forth below, the petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

NOTES:

- (1) Any reply must include a renewed petition (and fee) must include a petition under 37 C.F.R. §1.47 and must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 C.F.R. §1.47";
- (2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

RECEIVED

The record indicates:

AUG 11 2005

Fletcher Yoder

- the instant application was filed on 29 December, 2003, without, *inter alia*, a fully executed oath/declaration;
- on 12 April, 2004, the Office mailed a Notice of Missing Parts indicating, *inter alia*, that a fully executed oath/declaration was required within two months;
- on 6 July, 2004, Petitioner filed the instant petition with, *inter alia*, a statement by Petitioner Paul J. DiConza (Reg. No. 48,418), along with an oath/declaration containing the signature of named co-inventor Lorraine (for himself and on behalf of) but without the signature of named non-signing co-inventor Ronald Alan Kline (Mr. Kline), a narration the statement of, and an averment that the oath or declaration was presented to Mr. Kline and references attached documents—however, while the attached assignment references (in hand note) a transmittal letter, the transmittal letter is not attached to evidence/demonstrate that the entire application (description, claims, abstract, drawings) was presented to the non-signing inventor Mr. Kline along with the oath or declaration;
- in advance of the mailing of this decision, a call was placed to Counsel on 4 August, 2005, and a copy of the letter will be provided when the petition is resubmitted.

ANALYSIS

The regulations at 37 C.F.R. §1.47 provide in pertinent part:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

* * *

The regulations at 37 C.F.R. §1.63 provide in pertinent part:

§1.63 Oath or declaration.

(b) In addition to meeting the requirements of paragraph (a) of this section, the oath or declaration must also:

- (1) Identify the application to which it is directed;
- (2) State that the person making the oath or declaration has reviewed and understands the contents of the application, including the claims, as amended by any amendment specifically referred to in the oath or declaration; and
- (3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

When one alleges a refusal of the inventor to sign the application papers, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who, *inter alia*, presented the inventor with the application papers and/or to whom the refusal was made.

The commentary at MPEP §409.03(d) provides:

409.03(d) Proof of Unavailability or Refusal

INVENTOR CANNOT BE REACHED

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 C.F.R. §1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 C.F.R. §1.47.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 C.F.R. §1.47. 37 C.F.R. §1.43 may be available under these circumstances. See MPEP §409.02. Such a petition under 37 C.F.R. §1.47 will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached

should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

REFUSAL TO JOIN

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 C.F.R. §1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See MPEP §106. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 C.F.R. §1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 C.F.R. §1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Thus, not only must a copy of the entire application must be sent to the last known address of the non-signing inventor (or the estate representative) with a request that he/she sign the declaration for the patent application—and evidence of that transmittal submitted—but also a reasonable effort must be made to ascertain a current or last known address, and the petition (with fee) must state over the signature and registration number of the Petitioner the last known address and, if appropriate, evidence of the due diligence effort ascertaining same.

Alternatively, an oath or declaration for the patent application in compliance with 37 C.F.R. §§1.63 and 1.64 must be presented.

(The declaration must set forth the inventor's residence, citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.¹)

CONCLUSION

The record as it stands suggests the transmission of the entire application (description, claims, abstract and drawings), but references one or more documents not in evidence (e.g., the transmittal letter). The evidence of these requirements should be submitted with any renewed petition.

Out of an abundance of caution and because, *inter alia*, a property right is in question, Petitioner is requested to submit a copy of the transmittal letter with a renewed petition.

Therefore, the instant petition hereby is dismissed.

Further correspondence with respect to this matter should be addressed as follows:²

¹ See: MPEP 409.03(b).

² On July 15, 2005, the Central Facsimile (FAX) Number will change from (703) 872-9306 to (571) 273-8300. Faxes sent to the old number will be routed to the new number until September 15, 2005. After September 15, 2005, the old number will no longer be in service and (571) 273-8300 will be the only facsimile number recognized for centralized delivery. (For further information, see: <http://www.uspto.gov/web/offices/pac/dapp/opla/preognitice/cfax062005.pdf>.)

By mail: Commissioner for Patents³
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

By hand: Mail Stop: Petition
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions

³ To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

EXHIBIT E

FLETCHER YODER



A Professional Corporation
Attorneys at Law
7915 FM 1960 West, Suite 330
Houston, Texas 77070
Post Office Box 692289
Houston, Texas 77269-2289
Telephone (281) 970-4545
Facsimile (281) 970-4503

Writer's Extension: 110
Writer's E-Mail: yoder@fyiplaw.com

GERD:0461
RD25422-1

February 15, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Ronald Alan Kline
4408 St. Andrews Court
Norman, Oklahoma 73072

Re: Patent Application for Review and Execution

Dear Mr. Kline:

As you may recall, at the time you left General Electric Global Research in late 2003, the referenced patent application had been prepared for an invention that you co-invented with Peter William Lorraine. It is our understanding that, briefly after filing the application, the original application and papers for your review and signature were sent to you by Ms. Rita Lynch of GE Global Research. However, the executed papers for filing in the Patent & Trademark Office were never received back from you.

In an effort to perfect execution of the necessary papers, we are respectfully re-forwarding the entire set of papers to you. These include:

1. The original patent application filed in the Patent & Trademark Office;
2. the Figures that accompanied the application;
3. a Declaration indicating that yourself and Mr. Lorraine were the original inventors of the claimed subject matter; and
4. an Assignment and Oath & Assignment of the invention to your former employer.

Please kindly look over the application and the remaining documents. While the application has been allowed, we need the signed Declaration and Assignment documents for filing in the Patent & Trademark Office. We have also enclosed a Federal Express envelope duly

FLETCHER YODER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Mr. Ronald Alan Kline
February 15, 2006
Page 2

paid to facilitate the return of the Assignment and Declaration documents. Once the documents have been executed, kindly place them in the envelope and send the envelope back to me at the self-addressed location.

If we do not receive the documents from you within two weeks of mailing of this letter, we will file papers in the Patent & Trademark Office petitioning to proceed without your signature. However, we would certainly like to see you join in the application by signing the enclosed documents.

Should you have any questions or concerns whatsoever regarding the application or the documents enclosed with this letter, please do not hesitate to call me at (281) 970-4545. Thank you and we look forward to hearing from you in this matter.

Sincerely yours,


Patrick S. Yoder

PSY:lh
Enclosure

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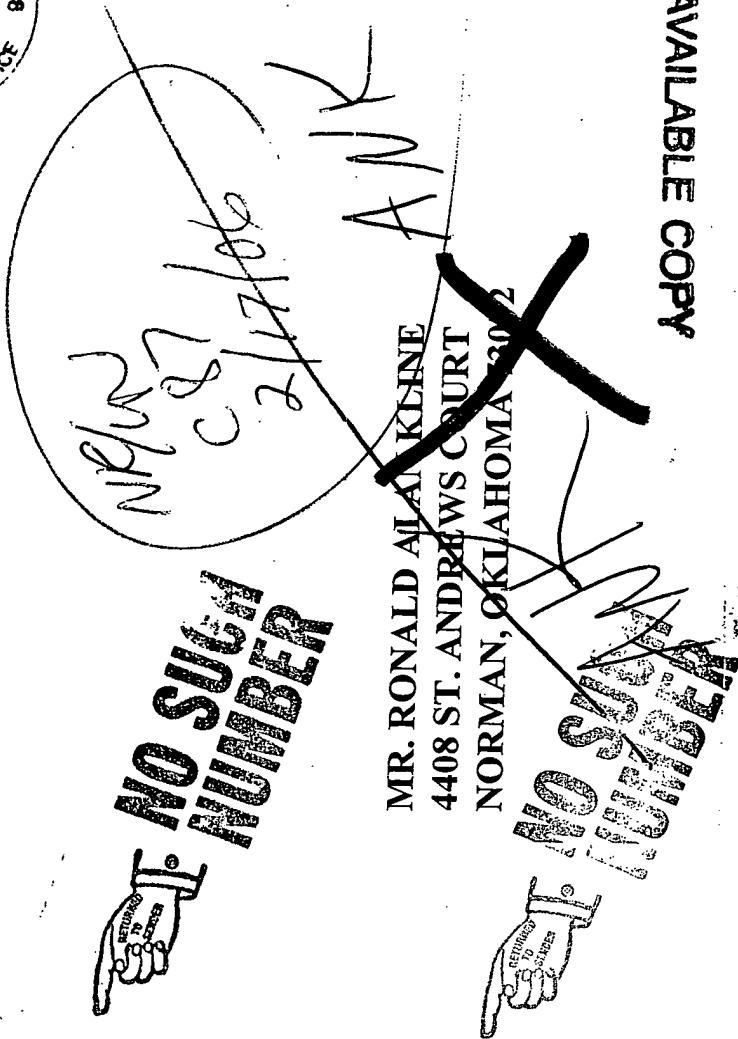
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